INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes and regulations involved	2
Statement	3
Argument	6
Conclusion	10

CITATIONS

Cases:

Bartchy v. *United States*, 132 F. 2d 348, reversed on ground of insufficient evidence, 319 U. S. 484	7
Cannon v. *United States*, 181 F. 2d 354, certiorari denied, 340 U. S. 892	7
Cleveland v. *United States*, 329 U. S. 14	9
Gorin v. *United States*, 312 U. S. 19	7, 9
Richter v. *United States*, 181 F. 2d 591, certiorari denied, 340 U. S. 892	7
Screws v. *United States*, 325 U. S. 91	9
Stumpf v. *Sanford*, 145 F. 2d 271, certiorari denied, 324 U. S. 876	7
United States v. *Haug*, 150 F. 2d 911	7
United States v. *Henderson*, 180 F. 2d 711, certiorari denied, 339 U. S. 963	6, 9
United States v. *Lembo*, 76 F. Supp. 209, reversed *sub. now. United States* v. *Aleli*, 170 F. 2d 18	7, 8
United States v. *Minder*, 63 F. Supp. 369, affirmed, 157 F. 2d 856	8
Yakus v. *United States*, 321 U. S. 414	8

Statutes and Regulations:

Selective Service Act of June 24, 1948, c. 625, Title I, 62 Stat. 604	2, 7, 8, 9
Selective Service Regulations, Ex. O. 9979, 13 F. R. 4180, now codified in 32 C.F.R. (1949 ed.) c. XVI:	
Section 1613.13	4
Section 1617.1	3, 7, 8, 9

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 133

CARL E. KIME, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 62-65) is reported at 188 F. 2d 677.

JURISDICTION

The judgment of the Court of Appeals was entered on April 25, 1951 (R. 66) and the petition for rehearing was denied on May 23, 1951 (R. 79). The petition for a writ of certiorari was filed on June 21, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the requirement of section 1617.1 of the Selective Service Regulations that every person required to register under the Selective Service Act of 1948 "must have a Registration Certificate (SSS Form No. 2) in his personal possession at all times" is an unconstitutional restriction upon freedom of religion as applied to conscientious objectors.

2. Whether section 1617.1 of the Selective Service Regulations created an obligation enforceable by criminal sanctions.

3. Whether a belief that a conscription law is morally wrong constitutes a valid defense to a charge of its violation.

STATUTES AND REGULATIONS INVOLVED

The Selective Service Act of June 24, 1948, c. 625, Title I, 62 Stat. 604, provides in pertinent part:

> Sec. 12 [50 U.S.C. App., Supp. 462]. II, III, (a) Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of

> not more than $10,000, or by both such fine and imprisonment, * * *
>
> * * * * *

Section 1617.1 of the Selective Service Regulations, Ex. O. 9979, 13 F. R. 4180, now codified in 32 C.F.R. (1949 ed.) c. XVI, provides:

> Every person required to present himself for and submit to registration must have a Registration Certificate (SSS Form No. 2) in his personal possession at all times. The failure of any person to have such Registration Certificate (SSS Form No. 2) in his personal possession shall be prima facie evidence [1] of his failure to register.

STATEMENT

An indictment filed in May 1950 in the United States District Court for the Northern District of Indiana charged petitioner, an involuntary registrant under the Selective Service Act of 1948, with knowingly and wilfully failing and neglecting to perform a duty required of him under the Act, in that he refused to carry his Registration Certificate with him at all times, in violation of section 12 of the Act (R. 1-2). Petitioner waived jury trial (R. 3). Following a trial by the court, he was found guilty (R. 27) and sentenced to one year's imprisonment (R. 32). On appeal, the Court of Appeals

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[1] The word "evidence" was omitted in the codification, apparently in error.

for the Seventh Circuit affirmed the judgment of conviction (R. 66).

The evidence adduced at the trial is undisputed and may be summarized as follows:

Previous to the present indictment, petitioner, a licensed minister of the Church of the Brethren (R. 12), a member of that church from the time of his childhood (R. 12), who had attended Bethany Biblical Seminary maintained by the Church of the Brethren (R. 12-13), and who was conscientiously opposed to war and war preparation in any form (R. 11-12, 21, 24, 25), failed to register as required by the Selective Service Act of 1948 and was indicted for such failure (R. 5-6; Plf. Ex. No. 1, R. 34). At the Government's request, however, the indictment was dismissed after the local draft board registered him in accordance with its rules (R. 7).[2] Pursuant to such registration the draft board mailed petitioner's registration certificate to him (R. 7) but he returned it to the board with the following letter (R. 9, 14, 19, 20-21; Plf. Ex. No. 2, R. 8, 35):

> You are probably aware of the dispensation of my case and the resultant registration by the Assistant U. S. Attorney, Mr. Noble F.

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[2] Section 1613.13 of the Selective Service Regulations provides for registration by the registrar of the local draft board where the registrant refuses to register. Such registration is given the same force and effect as if the registrant had signed the registration card himself. As a matter of policy, the Department of Justice tries to have recalcitrant conscientious objectors registered under the provisions of this section (R. 7).

Schlatter, from information give
attorney, Mr. Francis Heisler. Sm by my
tion was to be incorporated in tinforma-
Heisler was to prepare for my drief Mr.
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for registration at the time ant myself
pointed by the President. lace ap-

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had been returned. Also because he bond
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have remained unchanged. Ther in war
not conform with that part of the I can-
ing me to carry the aforesaid regi requir-
tificate in my possession at all timion cer-
advise the local board of any chr will I
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the registration certificate. ıg back

It seems particularly appropriat
my belief in the teachings of loveaffirm
during this season in which we d peace
birth of He who we call the Prinate the
and whose coming was heralded by Peace,
ing "Peace on earth, goodwill tols sing-
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Petitioner testified that carrying t
tion certificate "is part of the whole sygistra-
preparation for war, which I believe is of the
affected my conscience, if I carried i"; "it
He further testified that although he k. 21).
ıat the

law required him to carry his registration certificate he returned it to the local draft board, not with an intent to evade the law (R. 14, 19), but because "it was my intent to do what I thought was right under God's direction" (R. 14).

ARGUMENT

1. Petitioner's principal contention (Pet. 22-31) is that the requirement of section 1617.1 of the Regulations that every person must have his registration card in his possession at all times is an unconstitutional restriction upon freedom of religion as applied to conscientious objectors. He argues that the First Amendment provides an absolute guarantee of the freedom of religion, but that, even if that freedom can ever be restricted in the manner attempted, it can be done only when a "clear and present danger" warrants its restriction, and that such a danger does not exist here. These arguments against the validity of the Act are not new. They were advanced in urging the unconstitutionality of the registration requirements imposed by section 3 of the Act as applicable to conscientious objectors in *United States* v. *Henderson,* 180 F. 2d 711 (C.A. 7), certiorari denied, 339 U.S. 963-964. We fail to see any significant difference between the registration requirements sustained in the *Henderson* case, *supra,* and the requirement here to carry a registration card. Accordingly, we respectfully refer the Court to our brief in opposi-

tion to certiorari in the latter case (Nos. 716-719, O. T. 1949, pp. 5-7). See also *Cannon* v. *United States,* 181 F. 2d 354 (C.A. 9), certiorari denied, 340 U.S. 892; *Richter* v. *United States,* 181 F. 2d 591 (C.A. 9), certiorari denied, 340 U.S. 892.

2. Petitioner urges (Pet. 18-22) that it is not an offense under the Act for a registrant knowingly to refuse to carry his registration certificate, as required by section 1617.1 of the Regulations. This section provides that "every person required to present himself and submit to registration must have a Registration Certificate (SSS Form No. 2) in his personal possession at all times." Section 12 of the Act, in turn, provides for punishment of "any * * * person charged as herein provided with the duty of carrying out any of the provisions of this title, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, * * *." The statutory obligation is simple and unambiguous. The failure to obey such regulations has been repeatedly recognized by the courts as constituting a crime. See *United States* v. *Haug,* 150 F. 2d 911 (C.A. 2); *Stumpf* v. *Sanford,* 145 F. 2d 271 (C.A. 5), certiorari denied, 324 U.S. 876; *Bartchy* v. *United States,* 132 F. 2d 348, 349 (C.A. 5), reversed on ground of insufficient evidence, 319 U.S. 484; *United States* v. *Lembo,* 76 F. Supp. 209 (E.D. Pa.), reversed on other grounds *sub nom. United States* v. *Aleli,* 170 F. 2d 18 (C.A. 3); *United States*

v. *Minder,* 63 F. Supp. 369 (S.D. Cal.); affirmed, 157 F. 2d 856 (C.A. 9).

Although section 1617.1 does not use the word "duty," the words "must have" amount to the same thing and clearly impose an obligation upon the registrant to carry his registration card with him at all times. *United States* v. *Lembo, supra.* Section 12 makes knowing failure to perform such duty a criminal offense. Petitioner argues (Pet. 22) that section 1617.1 as a whole imposes no duty at all, but that, by virtue of the second sentence which provides that the failure of a registrant to have the registration certificate in his personal possession "shall be prima facie evidence of his failure to register," it simply states a rule of evidence in prosecutions for failure to register. This not only robs the carefully chosen words of the first sentence of their plain meaning, it robs them of any meaning at all, since the rule of evidence, which petitioner argues is the intendment of the whole of section 1617.1, is completely contained in the second sentence of that section.

Petitioner's further contention (Pet. 33-34)[3] that, if section 12 of the Act and section 1617.1 of

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[3] It is questionable whether this contention can now be advanced since petitioner did not assert it in the trial court. Cf. *Yakus* v. *United States,* 321 U.S. 414, 444-448. His motions for dismissal of the indictment and for a judgment of acquittal introduced at the close of the Government's case and renewed at the close of the case were based entirely on the invalidity of the card carrying requirement of the Act as applied to conscientious objections and on the lack of criminal intent (R. 10-11, 25).

the Regulations are thus to be interpreted, they fail to meet the standard of definiteness required of criminal statutes, is without merit. Section 1617.1 which states that every registrant "must have" his registration card in his possession at all times is certainly sufficiently definite to make the duty clear. So is Section 12 of the Act which makes it an offense "knowingly" to fail to perform a duty under the regulations. See *Screws* v. *United States,* 325 U.S. 91, 101-105; *Gorin* v. *United States,* 312 U.S. 19, 27-28. Petitioner's own testimony (R. 19) indicates that he was well aware of the requirements of the law. See also his letter to the draft board, *supra,* p. 5.

3. Likewise without merit is petitioner's final contention (Pet. 31-36) that, although he intentionally refused to carry the registration card, he lacked the criminal intent necessary to a valid conviction because his action was motivated by religious principles. Willful disobedience of the law of the land is not excused by a claim of religious sanction. *Cleveland* v. *United States,* 329 U.S. 14; *United States* v. *Henderson, supra,* p. 713-716. The case at bar is on all fours with the *Henderson* case, *supra,* so far as this contention is concerned. (See brief in opposition to certiorari in that case, Nos. 716-719, O.T. 1949, pp. 7-8).

CONCLUSION

The decision below is correct and there is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY 1951.

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